1-23-2017

State v. Christofferson Appellant's Reply Brief Dckt. 44104

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Respondent,	)	**NO. 44104**
	)	
v.	)	**BANNOCK COUNTY**
	)	**NO. CR 2015-8428**
JOANNE N. CHRISTOFFERSON,	)	**REPLY BRIEF**
	)	
Defendant-Appellant.	)	
_____	)	

_____

REPLY BRIEF OF APPELLANT

_____

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

_____

HONORABLE ROBERT C. NAFTZ
District Judge

_____

ERIC D. FREDERICKSEN
State Appellate Public Defender
State of Idaho
I.S.B. #6555

BEN P. MCGREEVY
Deputy State Appellate Public Defender
I.S.B. #8712
322 E. Front Street, Suite 570
Boise, Idaho 83702
Phone: (208) 334-2712
Fax: (208) 334-2985

ATTORNEYS FOR DEFENDANT-APPELLANT

KENNETH K. JORGENSEN
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

ATTORNEY FOR PLAINTIFF-RESPONDENT

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STATEMENT OF THE CASE

Nature of the Case

Pursuant to a plea agreement, Joanne N. Christofferson pleaded guilty to felony vehicular manslaughter. Ms. Christofferson filed an Idaho Criminal Rule 12.2 ("Rule 12.2") motion for additional defense services, requesting a psychological examination to assist for mitigation purposes at sentencing. The district court denied the Rule 12.2 motion. The district court imposed a unified sentence of ten years, with five years fixed. On appeal, Ms. Christofferson asserts the district court abused its discretion when it denied her Rule 12.2 motion.

In its Respondent's Brief, the State argues Ms. Christofferson has not shown the district court abused its discretion when it denied her Rule 12.2 motion, and that if the district court abused its discretion, the error was harmless. (Resp. Br., pp.6-14.) This Reply Brief is necessary to address the State's arguments, which are unavailing.

Statement of the Facts and Course of Proceedings

The statement of the facts and course of proceedings were previously articulated in Mr. Christofferson's Appellant's Brief. They need not be repeated in this Reply Brief, but are incorporated herein by reference thereto.

ISSUE

Did the district court abuse its discretion when it denied Ms. Christofferson's Idaho Criminal Rule 12.2 motion for additional defense services?

ARGUMENT

The District Court Abused Its Discretion When It Denied Ms. Christofferson's Idaho Criminal Rule 12.2 Motion For Additional Defense Services

A. Introduction

Ms. Christofferson asserts the district court abused its discretion when it denied her Idaho Criminal Rule 12.2 motion for additional defense services. The district court denied the Rule 12.2 motion after determining the services requested would be duplicative of the I.C. § 19-2524 screening and possible mental health examination that had already been ordered. (R., pp.136, 138.) However, the psychological examination services requested by Ms. Christofferson were not duplicative of the Section 19-2524 screening and mental health examination, because the requested psychological examination was to assist Ms. Christofferson in preparing for sentencing. In contrast, the Section 19-2524 screening and mental health examination were mainly to benefit the district court. Because the district court did not recognize this distinction, it did not act consistently with the applicable legal standards. Thus, the district court abused its discretion when it denied Ms. Christofferson's Rule 12.2 motion. The State has not met its burden of proving beyond a reasonable doubt the district court's denial of the Rule 12.2 motion was harmless.

B. The District Court Abused Its Discretion Because It Did Not Act Consistently With The Applicable Legal Standards

Ms. Christofferson asserts the district court abused its discretion when it denied her Rule 12.2 motion for additional defense services, because the district court did not act consistently with the applicable legal standards. Under the constitutional standards

for providing additional defense services, as implemented by Rule 12.2, the provision of assistance at public expense is required where necessary for a fair trial and a meaningful opportunity to present a defense. *See Ake v. Oklahoma*, 470 U.S. 68 (1985); *State v. Olin*, 103 Idaho 391 (1982). Thus, contrary to the district court's determination, the psychological examination services requested by Ms. Christofferson were not duplicative of the I.C. § 19-2524 screening and mental health examination, because the requested psychological examination was to assist Ms. Christofferson in preparing for sentencing. Conversely, the I.C. § 19-2524 screening and mental health examination were mainly for the benefit of the district court. Because the district court did not recognize this distinction, it did not act consistently with the applicable legal standards. *See State v. Hedger*, 115 Idaho 598, 600 (1989).

In the Respondent's Brief, the State argues, "[w]hile the underlying purposes behind Idaho Code § 19-2524 and Rule 12.2 may be different, there is no substantive difference between what [Ms.] Christofferson requested in her particular Rule 12.2 motion and what is provided for under Idaho Code § 19-2524." (Resp. Br., p.9.) According to the State, Ms. Christofferson did not "actually articulate how the end result of these two examinations would be any different. Nor can she." (Resp. Br., p.9.) The State contends "[t]here is no difference between the 'comprehensive' psychological evaluation [Ms.] Christofferson requested and 'in-depth evaluation' contemplated by I.C. § 19-2524." (Resp. Br., p.10.)

This argument by the State fails to acknowledge what the United States Supreme Court recognized in *Ake*: "Psychiatry is not . . . an exact science." *See Ake*, 470 U.S. at 81. The *Ake* Court stated "psychiatrists disagree widely and frequently . . . on the

appropriate diagnosis to be attached to given behavior and symptoms . . . ." *Id.* In another context, the Idaho Supreme Court has also recognized that psychiatry is not an exact science. *See State v. Myers*, 94 Idaho 570, 580 (1972) ("[I]f psychiatry were an exact science with regard to uniformity of theories, diagnoses and conclusions among its practitioners, there could be more of a rationale for making such opinion testimony binding upon the jury. Such does not appear to be the case and much of the literature in the field indicates deep-seated conflict between the various practitioners.").

The State's argument presupposes that psychiatry *is* an exact science, suggesting the psychological examination services requested by Ms. Christofferson and the Section 19-2524 screening and mental health examination would arrive at the same diagnoses, because they would both "result in a complete evaluation of the defendant's mental condition to inform the court's sentencing decision." (*See* Resp. Br., p.10.) The State's contention flies in the face of the United States Supreme Court's and Idaho Supreme Court's common understanding that psychiatry is not an exact science, and that psychiatrists may disagree on the appropriate diagnosis to be attached to given behavior and symptoms. *See Ake*, 470 U.S. at 81; *see also Myers*, 94 Idaho at 580.

The State's argument also ignores an important substantive difference between Section 19-2524 screenings and mental health examinations, and psychological examination services requested under Rule 12.2. Unlike a mental health expert appointed to assist a defendant pursuant to Rule 12.2, a Section 19-2524 screening evaluator or mental health evaluator would not "assist in evaluation, preparation, and presentation of the defense," *see Ake*, 470 U.S. at 83, nor would the Section 19-2524 evaluator furnish "certain specialized aid in the preparation of a defense." *See Olin*, 103

Idaho at 394. For example, psychiatrists "know the probative questions to ask of the opposing party's psychiatrists and how to interpret their answers." *Ake*, 470 U.S. at 80. While a mental health expert appointed under Rule 12.2 could render such assistance to a defendant like Ms. Christofferson, Section 19-2524 does not allow a screening evaluator or mental health evaluator to help a defendant in that way. *See generally* I.C. § 19-2524.

The State's argument fails to acknowledge that psychiatry is not an exact science, and ignores the important substantive difference that Rule 12.2 mental health experts may assist defendants in ways Section 19-2524 evaluators may not. The district court abused its discretion when it denied Ms. Christofferson's Rule 12.2 motion for additional defense services. The State's argument to the contrary is unavailing.

C. The State Has Not Met Its Burden Of Proving Beyond A Reasonable Doubt The District Court's Denial Of Ms. Christofferson's Rule 12.2 Motion Was Harmless

Ms. Christofferson asserts the State has not met its burden of proving beyond a reasonable doubt the district court's denial of her Rule 12.2 motion was harmless. *See State v. Perry*, 150 Idaho 209, 227 (2010).

On harmlessness, the State asserts, "[t]he district court's sentence would not have changed if there had been an additional mental health evaluation." (Resp. Br., p.11.) But Ms. Christofferson only went through an I.C. § 19-2524 screening. (*See* PSI, pp.47-49; Tr., p.88, L.11 – p.89, L.12.) Despite the indications that Ms. Christofferson had a serious mental illness, she never had a full mental health evaluation as required by Section 19-2524(3)(a). (*See* PSI, p.47; Tr., p.73, L.9 – p.75, L.2, p.96, Ls.12-16.)

The State also asserts, "[t]he district court had information regarding [Ms.] Christofferson's mental health when it made its sentencing decision. It is not clear what additional information would have been contained in a second psychological evaluation." (Resp. Br., p.12.) However, the Section 19-2524 screening, based on Ms. Christofferson's GAIN evaluation, contained a diagnosis of "Rule Out – Posttraumatic Stress Disorder or Acute Stress Disorder or other disorder of extreme stress." (PSI, p.47; *see* PSI, p.36.) The screening explained "the term 'rule out' is commonly used by IDOC staff or contracted GAIN assessors when the assessor is not licensed to diagnose mental illness. The use of 'rule out' indicates that the diagnosis as generated by the GAIN, is provisional." (PSI, p.47.) A full psychological examination as requested could have gone beyond the provisional "Rule Out" diagnoses of the screening to determine whether Ms. Christofferson actually suffered from posttraumatic stress disorder or acute stress disorder. Further, Ms. Christofferson reported she had previously been diagnosed with bi-polar disorder (PSI, pp.15-16), and a full psychological examination could have determined whether she had that condition as well.

Additionally, the State asserts that "even if the district court had permitted an additional psychological evaluation, it is not clear whether [Ms.] Christofferson would have even wanted one." (Resp. Br., pp.12-13.) However, Ms. Christofferson told her counsel that she did not want an evaluation only after the completion of the presentence report (*see* Tr., p.85, L.17 – p.86, L.5)—that is to say, after the district court abused its discretion in denying her Rule 12.2 motion and the Idaho Department of Correction failed to get her a full mental health evaluation as required by Section 19-2524. (*See*

Tr., p.73, L.9 – p.75, L.2, p.96, Ls.12-16.) Thus, whether Ms. Christofferson would have wanted a psychological evaluation after the completion of the presentence report is not relevant to the issue of whether the district court's abuse of discretion in denying her Rule 12.2 motion contributed to the sentence.

In light of the above considerations, the State has not met its burden of proving beyond a reasonable doubt the district court's denial of Ms. Christofferson's Rule 12.2 motion was harmless. *See Perry*, 150 Idaho at 227. The State's argument that any error was harmless is unavailing.

CONCLUSION

For the above reasons, as well as the reasons contained in the Appellant's Brief, Ms. Christofferson respectfully requests this Court vacate her judgment of conviction, reverse the district court's order denying her Rule 12.2 motion, and remand the case for further proceedings.

DATED this 23rd day of January, 2017.

_____/s/_____
BEN P. MCGREEVY
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 23rd day of January, 2017, I served a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

JOANNE N CHRISTOFFERSON
IDOC #117934
SWBCC UNIT 2
13200 S PLEASANT VALLEY ROAD
KUNA ID 83634

ROBERT C NAFTZ
DISTRICT COURT JUDGE
E-MAILED BRIEF

KELLY KENNETH KUMM
ATTORNEY AT LAW
E-MAILED BRIEF

KENNETH K JORGENSEN
DEPUTY ATTORNEY GENERAL
CRIMINAL DIVISION
E-MAILED BRIEF

_____/s/_____
EVAN A. SMITH
Administrative Assistant

BPM/eas